

Sixty-seventh
Legislative Assembly
of North Dakota

BILL NO.

Introduced by

Representative Meier

(Approved by the Delayed Bills Committee)

1 A BILL for an Act to create and enact section 32-48-06.1 of the North Dakota Century Code,
2 relating to liability of employers requiring COVID-19 vaccines; to amend and reenact sections
3 23-12-20, 32-48-02, 32-48-07, and 65-01-02 of the North Dakota Century Code, relating to
4 COVID-19 vaccines; to repeal sections 23-12-20 and 32-48-06.1 of the North Dakota Century
5 Code, relating to COVID-19 vaccines; to provide an effective date; to provide an expiration date;
6 and to declare an emergency.

7 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

8 **SECTION 1. AMENDMENT.** Section 23-12-20 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **23-12-20. ~~Vaccine~~COVID-19 vaccination and infection information.**

- 11 1. Except as provided under sections 15.1-23-02, 23-01-05.3, and 23-07-17.1, neither a
12 state government entity nor any of its subdivisions, agents, or assigns may:
- 13 a. Require documentation, whether physical or electronic, for the purpose of
14 certifying or otherwise communicating the following before providing access to
15 state property, funds, or services, or as a term of employment or of a contract:
- 16 (1) An individual's COVID-19 vaccination status;
- 17 (2) The presence of COVID-19 pathogens, antigens, or antibodies; or
- 18 (3) An individual's COVID-19 post-transmission recovery status;
- 19 b. Otherwise publish or share an individual's COVID-19 vaccination record or similar
20 health information, except as specifically authorized by the individual or otherwise
21 authorized by statute; or
- 22 c. Require a private business to obtain documentation, whether physical or
23 electronic, for purposes of certifying or otherwise communicating the following

1 before employment, as a term of a contract, or before providing access to
2 property, funds, or services based on:

3 (1) An individual's COVID-19 vaccination status;

4 (2) The presence of COVID-19 pathogens, antigens, or antibodies; or

5 (3) An individual's COVID-19 post-transmission recovery status.

6 2. ~~A private business located in this state may not require a patron or customer to~~
7 ~~provide any documentation certifying vaccination or post-transmission recovery to gain~~
8 ~~access to, entry upon, or services from the business. This subsection does not apply~~
9 ~~to a health care provider including a long-term care provider.~~

10 3. This section may not be construed to interfere with an individual's rights to access that
11 individual's own personal health information or with a person's right to access personal
12 health information of others which the person otherwise has a right to access.

13 4.3. Subsection 1 is not applicable to the state board of higher education, the university
14 system, or institutions under the control of the state board of higher education to the
15 extent the entity has adopted policies and procedures governing the type of
16 documentation required, the circumstances under which such documentation may be
17 shared, and exemptions from providing such documentation.

18 4. Subsection 1 does not apply to a requirement made of a nursing home, long-term care
19 facility, basic care facility, or assisted living facility if failure to comply with the
20 requirement would result in a violation of regulations or guidance issued by the centers
21 for Medicare and Medicaid services.

22 5. This section is not applicable during a COVID-19-related public health disaster or
23 emergency declared in accordance with chapter 37-17.1.

24 6. ~~This section is limited in application to a vaccination authorized by the federal food and~~
25 ~~drug administration pursuant to an emergency use authorization~~As used in this
26 section, the term "COVID-19" has the same meaning as provided in section 32-48-01.

27 **SECTION 2. AMENDMENT.** Section 32-48-02 of the North Dakota Century Code is
28 amended and reenacted as follows:

1 **32-48-02. Actual injury requirement in civil actions alleging COVID-19 exposure.**

2 A person may not bring or maintain a civil action alleging exposure or potential exposure to
3 COVID-19 unless the civil action involves an act intended to cause harm or an act that
4 constitutes actual malice. This section does not apply to section 32-48-06.1.

5 **SECTION 3.** Section 32-48-06.1 of the North Dakota Century Code is created and enacted
6 as follows:

7 **32-48-06.1. Vaccine liability - Statute of limitations.**

- 8 1. If a private business located in this state requires a prospective employee, an
9 employee, or an independent contractor to be vaccinated against COVID-19 as a term
10 of employment or term of a contract, that private business is subject to civil liability for
11 any damage or injury sustained by the prospective employee, employee, or
12 independent contractor as a direct result of having received the vaccine. This
13 subsection does not apply if the vaccine requirement occurs during a COVID-19-
14 related disaster or emergency declared in accordance with chapter 37-17.1. This
15 section does not apply if the private business recommends the prospective employee,
16 employee, or independent contractor receive a vaccination.
17 2. An action brought under this section must be commenced within twenty years of the
18 date of vaccination.

19 **SECTION 4. AMENDMENT.** Section 32-48-07 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **32-48-07. Construction.**

22 ~~This~~With the exception of section 32-48-06.1, this chapter may not be construed to:

- 23 1. Create, recognize, or ratify a liability claim or cause of action.
24 2. Eliminate or satisfy a required element of a liability claim or cause of action.
25 3. Amend, repeal, affect, or supersede any other immunity protection that may apply
26 under state or federal law.

27 **SECTION 5. AMENDMENT.** Section 65-01-02 of the North Dakota Century Code is
28 amended and reenacted as follows:

29 **65-01-02. Definitions. (Effective through August 31, 2022)**

30 In this title:

1. "Acute care" means a short course of intensive diagnostic and therapeutic services provided immediately following a work injury with a rapid onset of pronounced symptoms.
2. "Adopted" or "adoption" refers only to a legal adoption effected prior to the time of the injury.
3. "Allied health care professional" includes a health care provider, pharmacist, audiologist, speech language pathologist, or naturopath or any recognized practitioner who provides skilled services pursuant to the prescription of, or under the supervision or direction of any of these individuals.
4. "Artificial members" includes a device that is a substitute for a natural part, organ, limb, or other part of the body. The term includes a prescriptive device that is an aid for a natural part, organ, limb, or other part of the body if the damage to the prescriptive device is accompanied by an injury to the body. A prescriptive device includes prescription eyeglasses, contact lenses, dental braces, and orthopedic braces.
5. "Artificial replacements" means mechanical aids, including braces, belts, casts, or crutches as may be reasonable and necessary due to compensable injury.
6. "Average weekly wage" means the weekly wages the injured employee was receiving from all employments for which coverage is required or otherwise secured at the date of first disability. The average weekly wage determined under this subsection must be rounded to the nearest dollar. If the injured employee's wages are not fixed by the week, they must be determined by using the first applicable formula from the schedule below:
 - a. For seasonal employment, during the first consecutive days of disability up to twenty-eight days the average weekly wage is calculated pursuant to the first applicable formula in subdivisions b through g, and after that are calculated as one-fiftieth of the total wages from all occupations during the twelve months preceding the date of first disability or during the tax year preceding the date of first disability, or an average of the three tax years preceding the date of first disability, whichever is highest and for which accurate, reliable, and complete records are readily available.

- 1 b. The "average weekly wage" of a self-employed employer is determined by the
- 2 following formula: one fifty-second of the average annual net self-employed
- 3 earnings reported the three preceding tax years or preceding fifty-two weeks
- 4 whichever is higher if accurate, reliable, and complete records for those fifty-two
- 5 weeks are readily available.
- 6 c. Hourly or daily rate multiplied by number of hours or days worked per seven-day
- 7 week.
- 8 d. Monthly rate multiplied by twelve months and divided by fifty-two weeks.
- 9 e. Biweekly rate divided by two.
- 10 f. The usual wage paid other employees engaged in similar occupations.
- 11 g. A wage reasonably and fairly approximating the weekly wage lost by the injured
- 12 employee during the period of disability.
- 13 7. "Average weekly wage in the state" means the determination made of the average
- 14 weekly wage in the state by job service North Dakota on or before July first of each
- 15 year, computed to the next highest dollar.
- 16 8. "Board" means the workforce safety and insurance board of directors.
- 17 9. "Brother" and "sister" include a stepbrother and a stepsister, a half brother and a half
- 18 sister, and a brother and sister by adoption. The terms do not include a married
- 19 brother or sister unless that person actually is dependent.
- 20 10. "Child", for determining eligibility for benefits under chapter 65-05, means a legitimate
- 21 child, a stepchild, adopted child, posthumous child, foster child, and acknowledged
- 22 illegitimate child who is under eighteen years of age and resides with the injured
- 23 employee; or is under eighteen years of age and does not reside with the injured
- 24 employee but a duty of support is substantiated by an appropriate court order; or is
- 25 between eighteen and twenty-two years of age and enrolled as a full-time student in
- 26 any accredited educational institution and dependent upon the injured employee for
- 27 support; or is eighteen years of age or over and is physically or mentally incapable of
- 28 self-support and is actually dependent upon the injured employee for support. A child
- 29 does not include a married child unless actually dependent on the injured employee as
- 30 shown on the preceding year's income tax returns.

1 11. "Compensable injury" means an injury by accident arising out of and in the course of
2 hazardous employment which must be established by medical evidence supported by
3 objective medical findings.

4 a. The term includes:

5 (1) Disease caused by a hazard to which an employee is subjected in the
6 course of employment. The disease must be incidental to the character of
7 the business and not independent of the relation of employer and employee.
8 Disease includes effects from radiation.

9 (2) An injury to artificial members.

10 (3) Injuries due to heart attack or other heart-related disease, stroke, and
11 physical injury caused by mental stimulus, but only when caused by the
12 employee's employment with reasonable medical certainty, and only when it
13 is determined with reasonable medical certainty that unusual stress is at
14 least fifty percent of the cause of the injury or disease as compared with all
15 other contributing causes combined. Unusual stress means stress greater
16 than the highest level of stress normally experienced or anticipated in that
17 position or line of work.

18 (4) Injuries arising out of employer-required or supplied travel to and from a
19 remote jobsite or activities performed at the direction or under the control of
20 the employer. An injury under this paragraph does not include an injury for
21 which an injured worker may bring a civil action under section 32-48-06.1.

22 (5) An injury caused by the willful act of a third person directed against an
23 employee because of the employee's employment.

24 (6) A mental or psychological condition caused by a physical injury, but only
25 when the physical injury is determined with reasonable medical certainty to
26 be at least fifty percent of the cause of the condition as compared with all
27 other contributing causes combined, and only when the condition did not
28 pre-exist the work injury.

29 b. The term does not include:

30 (1) Ordinary diseases of life to which the general public outside of employment
31 is exposed or preventive treatment for communicable diseases, except that

1 the organization may pay for preventive treatment for a health care provider
2 as defined in section 23-07.5-01, firefighter, peace officer, correctional
3 officer, court officer, law enforcement officer, emergency medical technician,
4 or an individual trained and authorized by law or rule to render emergency
5 medical assistance or treatment that is exposed to a bloodborne pathogen
6 as defined in section 23-07.5-01 occurring in the course of employment and
7 for exposure to rabies occurring in the course of employment.

8 (2) A willfully self-inflicted injury, including suicide or attempted suicide, or an
9 injury caused by the employee's willful intention to injure or kill another.

10 (3) Any injury caused by the use of intoxicants, including recreational marijuana
11 use, or the illegal use of controlled substances.

12 (4) An injury that arises out of an altercation in which the injured employee is an
13 aggressor. This paragraph does not apply to public safety employees,
14 including law enforcement officers or private security personnel who are
15 required to engage in altercations as part of their job duties if the altercation
16 arises out of the performance of those job duties.

17 (5) An injury that arises out of an illegal act committed by the injured employee.

18 (6) An injury that arises out of an employee's voluntary nonpaid participation in
19 any recreational activity, including athletic events, parties, and picnics, even
20 though the employer pays some or all of the cost of the activity.

21 (7) Injuries attributable to a pre-existing injury, disease, or other condition,
22 including when the employment acts as a trigger to produce symptoms in
23 the pre-existing injury, disease, or other condition unless the employment
24 substantially accelerates its progression or substantially worsens its
25 severity. Pain is a symptom and may be considered in determining whether
26 there is a substantial acceleration or substantial worsening of a pre-existing
27 injury, disease, or other condition, but pain alone is not a substantial
28 acceleration or a substantial worsening.

29 (8) A nonemployment injury that, although acting upon a prior compensable
30 injury, is an independent intervening cause of injury.

1 (9) A latent or asymptomatic degenerative condition, caused in substantial part
2 by employment duties, which is triggered or made active by a subsequent
3 injury.

4 (10) A mental injury arising from mental stimulus.

5 12. "Date of first disability" means the first date the injured employee was unable to work
6 because of a compensable injury.

7 13. "Date of maximum medical improvement" or "date of maximum medical recovery"
8 means the date after which further recovery from, or lasting improvement to, an injury
9 or disease can no longer reasonably be anticipated based upon reasonable medical
10 probability.

11 14. "Director" means the director of the organization.

12 15. "Disability" means loss of earnings capacity and may be permanent total, temporary
13 total, or partial.

14 16. "Employee" means an individual who performs hazardous employment for another for
15 remuneration unless the individual is an independent contractor under the
16 common-law test.

17 a. The term includes:

18 (1) All elective and appointed officials of this state and its political subdivisions,
19 including municipal corporations and including the members of the
20 legislative assembly, all elective officials of any county, and all elective
21 peace officers of any city.

22 (2) Aliens.

23 (3) Human service zone general assistance workers, except those who are
24 engaged in repaying to human service zones or the department of human
25 services moneys the human service zones or the department of human
26 services have been compelled by statute to expend for general assistance.

27 (4) Minors, whether lawfully or unlawfully employed. A minor is deemed sui juris
28 for the purposes of this title, and no other person has any claim for relief or
29 right to claim workforce safety and insurance benefits for any injury to a
30 minor worker, but in the event of the award of a lump sum of benefits to a

1 minor employee, the lump sum may be paid only to the legally appointed
2 guardian of the minor.

3 b. The term does not include:

4 (1) An individual whose employment is both casual and not in the course of the
5 trade, business, profession, or occupation of that individual's employer.

6 (2) An individual who is engaged in an illegal enterprise or occupation.

7 (3) The spouse of an employer or the child under the age of twenty-two of an
8 employer. For purposes of this paragraph and section 65-07-01, "child"
9 means any legitimate child, stepchild, adopted child, foster child, or
10 acknowledged illegitimate child.

11 (4) A real estate broker or real estate salesperson, provided the individual
12 meets the following three requirements:

13 (a) The salesperson or broker must be a licensed real estate agent under
14 section 43-23-05.

15 (b) Substantially all of the salesperson's or broker's remuneration for the
16 services performed as a real estate agent must be directly related to
17 sales or other efforts rather than to the number of hours worked.

18 (c) A written agreement must exist between the salesperson or broker
19 and the person for which the salesperson or broker works, which
20 agreement must provide the salesperson or broker will not be treated
21 as an employee but rather as an independent contractor.

22 (5) The members of the board of directors of a business corporation who are
23 not employed in any capacity by the corporation other than as members of
24 the board of directors.

25 (6) An individual delivering newspapers or shopping news, if substantially all of
26 the individual's remuneration is directly related to sales or other efforts
27 rather than to the number of hours worked and a written agreement exists
28 between the individual and the publisher of the newspaper or shopping
29 news which states the individual is an independent contractor.

30 (7) An employer.

- 1 17. "Employer" means a person that engages or received the services of another for
2 remuneration unless the person performing the services is an independent contractor
3 under the common-law test. The term includes:
- 4 a. The state and all political subdivisions thereof.
 - 5 b. All public and quasi-public corporations in this state.
 - 6 c. Every person, partnership, limited liability company, association, and private
7 corporation, including a public service corporation.
 - 8 d. The legal representative of any deceased employer.
 - 9 e. The receiver or trustee of any person, partnership, limited liability company,
10 association, or corporation having one or more employees as herein defined.
 - 11 f. The president, vice presidents, secretary, or treasurer of a business corporation,
12 but not members of the board of directors of a business corporation who are not
13 also officers of the corporation.
 - 14 g. The managers of a limited liability company.
 - 15 h. The president, vice presidents, secretary, treasurer, or board of directors of an
16 association or cooperative organized under chapter 6-06, 10-12, 10-13, 10-15,
17 36-08, or 49-21.
 - 18 i. The clerk, assessor, treasurer, or any member of the board of supervisors of an
19 organized township, if the person is not employed by the township in any other
20 capacity.
 - 21 j. A multidistrict special education unit.
 - 22 k. An area career and technology center.
 - 23 l. A regional education association.
- 24 18. "Fee schedule" means the payment formulas established in the organization
25 publication entitled "Medical and Hospital Fees".
- 26 19. "Fund" means the workforce safety and insurance fund.
- 27 20. "Hazardous employment" means any employment in which one or more employees
28 are employed regularly in the same business or in or about the establishment except:
- 29 a. Agricultural or domestic service.
 - 30 b. Any employment of a common carrier by railroad.

- 1 c. Any employment for the transportation of property or persons by nonresidents,
2 where, in such transportation, the highways are not traveled more than seven
3 miles [11.27 kilometers] and return over the same route within the state of North
4 Dakota.
- 5 d. All members of the clergy and employees of religious organizations engaged in
6 the operation, maintenance, and conduct of the place of worship.
- 7 21. "Health care provider" means a doctor of medicine or osteopathy, chiropractor, dentist,
8 optometrist, podiatrist, or psychologist acting within the scope of the doctor's license, a
9 physical therapist, an advanced practice registered nurse, or a certified physician
10 assistant.
- 11 22. "Medical marijuana" means the use of all parts of the plant of the genus cannabis, the
12 seeds of the plant, the resin extracted from any part of the plant, and every compound,
13 manufacture, salt, derivative, mixture, or preparation of the plant, the seeds of the
14 plant, or the resin extracted from any part of the plant as a physician-recommended
15 form of medicine or herbal therapy. The term does not include treatments or
16 preparations specifically approved by the United States food and drug administration
17 as a drug product.
- 18 23. "Noncompliance" means failure to follow the requirements of chapter 65-04. An
19 employer may be in noncompliance regardless of the employer's insured or uninsured
20 status with the organization.
- 21 24. "Organization" means workforce safety and insurance, or the director, or any
22 department head, assistant, or employee of workforce safety and insurance
23 designated by the director, to act within the course and scope of that person's
24 employment in administering the policies, powers, and duties of this title.
- 25 25. "Parent" includes a stepparent and a parent by adoption.
- 26 26. "Payroll report" means the mechanism created by the organization and used by
27 employers to report all employee payroll required by the organization.
- 28 27. "Permanent impairment" means the loss of or loss of use of a member of the body
29 existing after the date of maximum medical improvement and includes disfigurement
30 resulting from an injury.

- 1 28. "Permanent total disability" means disability that is the direct result of a compensable
2 injury that prevents an injured employee from performing any work and results from
3 any one of the following conditions:
- 4 a. Total and permanent loss of sight of both eyes;
 - 5 b. Loss of both legs or loss of both feet at or above the ankle;
 - 6 c. Loss of both arms or loss of both hands at or above the wrist;
 - 7 d. Loss of any two of the members or faculties in subdivision a, b, or c;
 - 8 e. Permanent and complete paralysis of both legs or both arms or of one leg and
9 one arm;
 - 10 f. Third-degree burns that cover at least forty percent of the body and require
11 grafting;
 - 12 g. A medically documented brain injury affecting cognitive and mental functioning
13 which renders an injured employee unable to provide self-care and requires
14 supervision or assistance with a majority of the activities of daily living; or
 - 15 h. A compensable injury that results in a permanent partial impairment rating of the
16 whole body of at least twenty-five percent pursuant to section 65-05-12.2.
- 17 If the injured employee has not reached maximum medical improvement within one
18 hundred four weeks, the injured employee may receive a permanent partial
19 impairment rating if a rating will assist the organization in assessing the injured
20 employee's capabilities. Entitlement to a rating is solely within the discretion of the
21 organization.
- 22 29. "Rehabilitation services" means nonmedical services reasonably necessary to restore
23 a disabled employee to substantial gainful employment as defined by section
24 65-05.1-01 as near as possible. The term may include vocational evaluation,
25 counseling, education, workplace modification, vocational retraining including training
26 for alternative employment with the same employer, and job placement assistance.
- 27 30. "Seasonal employment" includes occupations that are not permanent or that do not
28 customarily operate throughout the entire year. Seasonal employment is determined
29 by what is customary with respect to the employer at the time of injury.
- 30 31. "Spouse" includes only the decedent's husband or wife who was living with the
31 decedent or was dependent upon the decedent for support at the time of injury.

- 1 32. "Subcontractor" means a person that agrees to perform all or part of the work for a
2 contractor or another subcontractor.
- 3 33. "Temporary total disability" means disability that results in the inability of an injured
4 employee to earn wages as a result of a compensable injury for which disability
5 benefits may not exceed a cumulative total of one hundred four weeks or the date the
6 injured employee reaches maximum medical improvement or maximum medical
7 recovery, whichever occurs first.
- 8 34. "Uninsured" means failure of an employer to secure mandatory coverage with the
9 organization or failure to pay premium, assessment, penalty, or interest, as calculated
10 by the organization, which is more than forty-five days past due. An uninsured
11 employer is subject to chapter 65-09.
- 12 35. "Utilization review" means the initial and continuing evaluation of appropriateness in
13 terms of both the level and the quality of health care and health services provided a
14 patient, based on medically accepted standards. The evaluation must be
15 accomplished by means of a system that identifies the utilization of medical services,
16 based on medically accepted standards, and which refers instances of possible
17 inappropriate utilization to the organization to obtain opinions and recommendations of
18 expert medical consultants to review individual cases for which administrative action
19 may be deemed necessary.
- 20 36. "Valid functional capacities examination" means:
21 a. The results of a physical examination consisting of a battery of standardized
22 assessments that offer reliable results in performance-based measures and
23 demonstrate the level and duration an injured employee may return to work.
24 b. The conclusions of medical experts, following observations of other activities the
25 medical expert determines similarly predictive, when the results of the physical
26 examination in subdivision a are not obtained or reliable.
- 27 37. a. "Wages" means:
28 (1) An injured employee's remuneration from all employment reportable to the
29 internal revenue service as earned income for federal income tax purposes.

1 (2) For members of the national guard who sustain a compensable injury while
2 on state active duty, "wages" includes income from federal employment and
3 may be included in determining the average weekly wage.

4 (3) For purposes of chapter 65-04 only, "wages" means all gross earnings of all
5 employees. The term includes all pretax deductions for amounts allocated
6 by the employee for deferred compensation, medical reimbursement,
7 retirement, or any similar program, but may not include dismissal or
8 severance pay.

9 b. The organization may consider postinjury wages for which coverage was not
10 required or otherwise secured in North Dakota for purposes of determining
11 appropriate vocational rehabilitation options or entitlement to disability benefits
12 under this title.

13 **Definitions. (Effective after August 31, 2022)**

14 In this title:

- 15 1. "Acute care" means a short course of intensive diagnostic and therapeutic services
16 provided immediately following a work injury with a rapid onset of pronounced
17 symptoms.
- 18 2. "Adopted" or "adoption" refers only to a legal adoption effected prior to the time of the
19 injury.
- 20 3. "Allied health care professional" includes a health care provider, pharmacist,
21 audiologist, speech language pathologist, or naturopath or any recognized practitioner
22 who provides skilled services pursuant to the prescription of, or under the supervision
23 or direction of any of these individuals.
- 24 4. "Artificial members" includes a device that is a substitute for a natural part, organ,
25 limb, or other part of the body. The term includes a prescriptive device that is an aid for
26 a natural part, organ, limb, or other part of the body if the damage to the prescriptive
27 device is accompanied by an injury to the body. A prescriptive device includes
28 prescription eyeglasses, contact lenses, dental braces, and orthopedic braces.
- 29 5. "Artificial replacements" means mechanical aids, including braces, belts, casts, or
30 crutches as may be reasonable and necessary due to compensable injury.

- 1 6. "Average weekly wage" means the weekly wages the injured employee was receiving
2 from all employments for which coverage is required or otherwise secured at the date
3 of first disability. The average weekly wage determined under this subsection must be
4 rounded to the nearest dollar. If the injured employee's wages are not fixed by the
5 week, they must be determined by using the first applicable formula from the schedule
6 below:
- 7 a. For seasonal employment, during the first consecutive days of disability up to
8 twenty-eight days the average weekly wage is calculated pursuant to the first
9 applicable formula in subdivisions b through g, and after that are calculated as
10 one-fiftieth of the total wages from all occupations during the twelve months
11 preceding the date of first disability or during the tax year preceding the date of
12 first disability, or an average of the three tax years preceding the date of first
13 disability, whichever is highest and for which accurate, reliable, and complete
14 records are readily available.
- 15 b. The "average weekly wage" of a self-employed employer is determined by the
16 following formula: one fifty-second of the average annual net self-employed
17 earnings reported the three preceding tax years or preceding fifty-two weeks
18 whichever is higher if accurate, reliable, and complete records for those fifty-two
19 weeks are readily available.
- 20 c. Hourly or daily rate multiplied by number of hours or days worked per seven-day
21 week.
- 22 d. Monthly rate multiplied by twelve months and divided by fifty-two weeks.
- 23 e. Biweekly rate divided by two.
- 24 f. The usual wage paid other employees engaged in similar occupations.
- 25 g. A wage reasonably and fairly approximating the weekly wage lost by the injured
26 employee during the period of disability.
- 27 7. "Average weekly wage in the state" means the determination made of the average
28 weekly wage in the state by job service North Dakota on or before July first of each
29 year, computed to the next highest dollar.
- 30 8. "Board" means the workforce safety and insurance board of directors.

- 1 9. "Brother" and "sister" include a stepbrother and a stepsister, a half brother and a half
2 sister, and a brother and sister by adoption. The terms do not include a married
3 brother or sister unless that person actually is dependent.
- 4 10. "Child", for determining eligibility for benefits under chapter 65-05, means a legitimate
5 child, a stepchild, adopted child, posthumous child, foster child, and acknowledged
6 illegitimate child who is under eighteen years of age and resides with the injured
7 employee; or is under eighteen years of age and does not reside with the injured
8 employee but a duty of support is substantiated by an appropriate court order; or is
9 between eighteen and twenty-two years of age and enrolled as a full-time student in
10 any accredited educational institution and dependent upon the injured employee for
11 support; or is eighteen years of age or over and is physically or mentally incapable of
12 self-support and is actually dependent upon the injured employee for support. A child
13 does not include a married child unless actually dependent on the injured employee as
14 shown on the preceding year's income tax returns.
- 15 11. "Compensable injury" means an injury by accident arising out of and in the course of
16 hazardous employment which must be established by medical evidence supported by
17 objective medical findings.
- 18 a. The term includes:
- 19 (1) Disease caused by a hazard to which an employee is subjected in the
20 course of employment. The disease must be incidental to the character of
21 the business and not independent of the relation of employer and employee.
22 Disease includes effects from radiation.
- 23 (2) An injury to artificial members.
- 24 (3) Injuries due to heart attack or other heart-related disease, stroke, and
25 physical injury caused by mental stimulus, but only when caused by the
26 employee's employment with reasonable medical certainty, and only when it
27 is determined with reasonable medical certainty that unusual stress is at
28 least fifty percent of the cause of the injury or disease as compared with all
29 other contributing causes combined. Unusual stress means stress greater
30 than the highest level of stress normally experienced or anticipated in that
31 position or line of work.

(4) Injuries arising out of employer-required or supplied travel to and from a remote jobsite or activities performed at the direction or under the control of the employer. An injury under this paragraph does not include an injury for which an injured worker may bring a civil action under section 32-48-06.1.

(5) An injury caused by the willful act of a third person directed against an employee because of the employee's employment.

(6) A mental or psychological condition caused by a physical injury, but only when the physical injury is determined with reasonable medical certainty to be at least fifty percent of the cause of the condition as compared with all other contributing causes combined, and only when the condition did not pre-exist the work injury.

b. The term does not include:

(1) Ordinary diseases of life to which the general public outside of employment is exposed or preventive treatment for communicable diseases, except that the organization may pay for preventive treatment for a health care provider as defined in section 23-07.5-01, firefighter, peace officer, correctional officer, court officer, law enforcement officer, emergency medical technician, or an individual trained and authorized by law or rule to render emergency medical assistance or treatment that is exposed to a bloodborne pathogen as defined in section 23-07.5-01 occurring in the course of employment and for exposure to rabies occurring in the course of employment.

(2) A willfully self-inflicted injury, including suicide or attempted suicide, or an injury caused by the employee's willful intention to injure or kill another.

(3) Any injury caused by the use of intoxicants, including recreational marijuana use, or the illegal use of controlled substances.

(4) An injury that arises out of an altercation in which the injured employee is an aggressor. This paragraph does not apply to public safety employees, including law enforcement officers or private security personnel who are required to engage in altercations as part of their job duties if the altercation arises out of the performance of those job duties.

(5) An injury that arises out of an illegal act committed by the injured employee.

(6) An injury that arises out of an employee's voluntary nonpaid participation in any recreational activity, including athletic events, parties, and picnics, even though the employer pays some or all of the cost of the activity.

(7) Injuries attributable to a pre-existing injury, disease, or other condition, including when the employment acts as a trigger to produce symptoms in the pre-existing injury, disease, or other condition unless the employment substantially accelerates its progression or substantially worsens its severity. Pain is a symptom and may be considered in determining whether there is a substantial acceleration or substantial worsening of a pre-existing injury, disease, or other condition, but pain alone is not a substantial acceleration or a substantial worsening.

(8) A nonemployment injury that, although acting upon a prior compensable injury, is an independent intervening cause of injury.

(9) A latent or asymptomatic degenerative condition, caused in substantial part by employment duties, which is triggered or made active by a subsequent injury.

(10) A mental injury arising from mental stimulus.

12. "Date of first disability" means the first date the injured employee was unable to work because of a compensable injury.

13. "Date of maximum medical improvement" or "date of maximum medical recovery" means the date after which further recovery from, or lasting improvement to, an injury or disease can no longer reasonably be anticipated based upon reasonable medical probability.

14. "Director" means the director of the organization.

15. "Disability" means loss of earnings capacity and may be permanent total, temporary total, or partial.

16. "Employee" means an individual who performs hazardous employment for another for remuneration unless the individual is an independent contractor under the common-law test.

a. The term includes:

(1) All elective and appointed officials of this state and its political subdivisions, including municipal corporations and including the members of the legislative assembly, all elective officials of any county, and all elective peace officers of any city.

(2) Aliens.

(3) Human service zone general assistance workers, except those who are engaged in repaying to human service zones or the department of health and human services moneys the human service zones or the department of health and human services have been compelled by statute to expend for general assistance.

(4) Minors, whether lawfully or unlawfully employed. A minor is deemed sui juris for the purposes of this title, and no other person has any claim for relief or right to claim workforce safety and insurance benefits for any injury to a minor worker, but in the event of the award of a lump sum of benefits to a minor employee, the lump sum may be paid only to the legally appointed guardian of the minor.

b. The term does not include:

(1) An individual whose employment is both casual and not in the course of the trade, business, profession, or occupation of that individual's employer.

(2) An individual who is engaged in an illegal enterprise or occupation.

(3) The spouse of an employer or the child under the age of twenty-two of an employer. For purposes of this paragraph and section 65-07-01, "child" means any legitimate child, stepchild, adopted child, foster child, or acknowledged illegitimate child.

(4) A real estate broker or real estate salesperson, provided the individual meets the following three requirements:

(a) The salesperson or broker must be a licensed real estate agent under section 43-23-05.

(b) Substantially all of the salesperson's or broker's remuneration for the services performed as a real estate agent must be directly related to sales or other efforts rather than to the number of hours worked.

- 1 (c) A written agreement must exist between the salesperson or broker
2 and the person for which the salesperson or broker works, which
3 agreement must provide the salesperson or broker will not be treated
4 as an employee but rather as an independent contractor.
- 5 (5) The members of the board of directors of a business corporation who are
6 not employed in any capacity by the corporation other than as members of
7 the board of directors.
- 8 (6) An individual delivering newspapers or shopping news, if substantially all of
9 the individual's remuneration is directly related to sales or other efforts
10 rather than to the number of hours worked and a written agreement exists
11 between the individual and the publisher of the newspaper or shopping
12 news which states the individual is an independent contractor.
- 13 (7) An employer.
- 14 17. "Employer" means a person that engages or received the services of another for
15 remuneration unless the person performing the services is an independent contractor
16 under the common-law test. The term includes:
- 17 a. The state and all political subdivisions thereof.
- 18 b. All public and quasi-public corporations in this state.
- 19 c. Every person, partnership, limited liability company, association, and private
20 corporation, including a public service corporation.
- 21 d. The legal representative of any deceased employer.
- 22 e. The receiver or trustee of any person, partnership, limited liability company,
23 association, or corporation having one or more employees as herein defined.
- 24 f. The president, vice presidents, secretary, or treasurer of a business corporation,
25 but not members of the board of directors of a business corporation who are not
26 also officers of the corporation.
- 27 g. The managers of a limited liability company.
- 28 h. The president, vice presidents, secretary, treasurer, or board of directors of an
29 association or cooperative organized under chapter 6-06, 10-12, 10-13, 10-15,
30 36-08, or 49-21.

- 1 i. The clerk, assessor, treasurer, or any member of the board of supervisors of an
- 2 organized township, if the person is not employed by the township in any other
- 3 capacity.
- 4 j. A multidistrict special education unit.
- 5 k. An area career and technology center.
- 6 l. A regional education association.
- 7 18. "Fee schedule" means the payment formulas established in the organization
- 8 publication entitled "Medical and Hospital Fees".
- 9 19. "Fund" means the workforce safety and insurance fund.
- 10 20. "Hazardous employment" means any employment in which one or more employees
- 11 are employed regularly in the same business or in or about the establishment except:
- 12 a. Agricultural or domestic service.
- 13 b. Any employment of a common carrier by railroad.
- 14 c. Any employment for the transportation of property or persons by nonresidents,
- 15 where, in such transportation, the highways are not traveled more than seven
- 16 miles [11.27 kilometers] and return over the same route within the state of North
- 17 Dakota.
- 18 d. All members of the clergy and employees of religious organizations engaged in
- 19 the operation, maintenance, and conduct of the place of worship.
- 20 21. "Health care provider" means a doctor of medicine or osteopathy, chiropractor, dentist,
- 21 optometrist, podiatrist, or psychologist acting within the scope of the doctor's license, a
- 22 physical therapist, an advanced practice registered nurse, or a certified physician
- 23 assistant.
- 24 22. "Medical marijuana" means the use of all parts of the plant of the genus cannabis, the
- 25 seeds of the plant, the resin extracted from any part of the plant, and every compound,
- 26 manufacture, salt, derivative, mixture, or preparation of the plant, the seeds of the
- 27 plant, or the resin extracted from any part of the plant as a physician-recommended
- 28 form of medicine or herbal therapy. The term does not include treatments or
- 29 preparations specifically approved by the United States food and drug administration
- 30 as a drug product.

- 1 23. "Noncompliance" means failure to follow the requirements of chapter 65-04. An
2 employer may be in noncompliance regardless of the employer's insured or uninsured
3 status with the organization.
- 4 24. "Organization" means workforce safety and insurance, or the director, or any
5 department head, assistant, or employee of workforce safety and insurance
6 designated by the director, to act within the course and scope of that person's
7 employment in administering the policies, powers, and duties of this title.
- 8 25. "Parent" includes a stepparent and a parent by adoption.
- 9 26. "Payroll report" means the mechanism created by the organization and used by
10 employers to report all employee payroll required by the organization.
- 11 27. "Permanent impairment" means the loss of or loss of use of a member of the body
12 existing after the date of maximum medical improvement and includes disfigurement
13 resulting from an injury.
- 14 28. "Permanent total disability" means disability that is the direct result of a compensable
15 injury that prevents an injured employee from performing any work and results from
16 any one of the following conditions:
- 17 a. Total and permanent loss of sight of both eyes;
- 18 b. Loss of both legs or loss of both feet at or above the ankle;
- 19 c. Loss of both arms or loss of both hands at or above the wrist;
- 20 d. Loss of any two of the members or faculties in subdivision a, b, or c;
- 21 e. Permanent and complete paralysis of both legs or both arms or of one leg and
22 one arm;
- 23 f. Third-degree burns that cover at least forty percent of the body and require
24 grafting;
- 25 g. A medically documented brain injury affecting cognitive and mental functioning
26 which renders an injured employee unable to provide self-care and requires
27 supervision or assistance with a majority of the activities of daily living; or
- 28 h. A compensable injury that results in a permanent partial impairment rating of the
29 whole body of at least twenty-five percent pursuant to section 65-05-12.2.
- 30 If the injured employee has not reached maximum medical improvement within one
31 hundred four weeks, the injured employee may receive a permanent partial

1 impairment rating if a rating will assist the organization in assessing the injured
2 employee's capabilities. Entitlement to a rating is solely within the discretion of the
3 organization.

4 29. "Rehabilitation services" means nonmedical services reasonably necessary to restore
5 a disabled employee to substantial gainful employment as defined by section
6 65-05.1-01 as near as possible. The term may include vocational evaluation,
7 counseling, education, workplace modification, vocational retraining including training
8 for alternative employment with the same employer, and job placement assistance.

9 30. "Seasonal employment" includes occupations that are not permanent or that do not
10 customarily operate throughout the entire year. Seasonal employment is determined
11 by what is customary with respect to the employer at the time of injury.

12 31. "Spouse" includes only the decedent's husband or wife who was living with the
13 decedent or was dependent upon the decedent for support at the time of injury.

14 32. "Subcontractor" means a person that agrees to perform all or part of the work for a
15 contractor or another subcontractor.

16 33. "Temporary total disability" means disability that results in the inability of an injured
17 employee to earn wages as a result of a compensable injury for which disability
18 benefits may not exceed a cumulative total of one hundred four weeks or the date the
19 injured employee reaches maximum medical improvement or maximum medical
20 recovery, whichever occurs first.

21 34. "Uninsured" means failure of an employer to secure mandatory coverage with the
22 organization or failure to pay premium, assessment, penalty, or interest, as calculated
23 by the organization, which is more than forty-five days past due. An uninsured
24 employer is subject to chapter 65-09.

25 35. "Utilization review" means the initial and continuing evaluation of appropriateness in
26 terms of both the level and the quality of health care and health services provided a
27 patient, based on medically accepted standards. The evaluation must be
28 accomplished by means of a system that identifies the utilization of medical services,
29 based on medically accepted standards, and which refers instances of possible
30 inappropriate utilization to the organization to obtain opinions and recommendations of

expert medical consultants to review individual cases for which administrative action may be deemed necessary.

36. "Valid functional capacities examination" means:

- a. The results of a physical examination consisting of a battery of standardized assessments that offer reliable results in performance-based measures and demonstrate the level and duration an injured employee may return to work.
- b. The conclusions of medical experts, following observations of other activities the medical expert determines similarly predictive, when the results of the physical examination in subdivision a are not obtained or reliable.

37. a. "Wages" means:

- (1) An injured employee's remuneration from all employment reportable to the internal revenue service as earned income for federal income tax purposes.
 - (2) For members of the national guard who sustain a compensable injury while on state active duty, "wages" includes income from federal employment and may be included in determining the average weekly wage.
 - (3) For purposes of chapter 65-04 only, "wages" means all gross earnings of all employees. The term includes all pretax deductions for amounts allocated by the employee for deferred compensation, medical reimbursement, retirement, or any similar program, but may not include dismissal or severance pay.
- b. The organization may consider postinjury wages for which coverage was not required or otherwise secured in North Dakota for purposes of determining appropriate vocational rehabilitation options or entitlement to disability benefits under this title.

SECTION 6. REPEAL. Sections 23-12-20 and 32-48-06.1 of the North Dakota Century Code are repealed.

SECTION 7. EFFECTIVE DATE. Section 6 of this Act becomes effective on August 1, 2023.

SECTION 8. EXPIRATION DATE. Sections 2, 4, and 5 this Act are effective through July 31, 2023, and after that date are ineffective.

SECTION 9. EMERGENCY. This Act is declared to be an emergency measure.